IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO.18617 of 1998

Between:

Durga Commercial Corporation, Vijayawada, Krishna District.
Rep by its Managing Partner, Sri Adusumilli Krishna Mohan Rao.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep. by its Principal Secretary,
Home Department, Secretariat, Hyderabad.
2 The Joint Collector,
Krishna District at Machilipatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any appropriate Writ, order or direction preferably a Writ in the nature of Mandamus declaring the Memo No.1730/Genl.A4/94-3, dt.23-5-98 issued by the 1st Respondent as illegal, null, void and arbitrary.

Counsel for the Petitioner: MR. V.V.L.N.SARMA

Counsel for the Respondents: GP FOR HOME

The Court made the following:

ORDER:

Questioning the action of the 1st respondent in issuing the impugned Memo No.1730/Genl.A4/94-3, dated 23.05.1995 in extending the time for reduction of seating capacity in theatres, the present writ petition is filed.

When the matter is taken up for hearing, none appears for the petitioner. Learned Government Pleader for Home appearing for the respondents submits that the subject matter of this writ petition is squarely covered by the judgment of this Court in **Nataraj Theatre v. Govt. of Andhra Pradesh**[1] (Writ Petition Nos.21691 of 1995 and 30691 of 1998, dated 26.08.1999), wherein this Court considered similar issue and disposed of the same with the following directions:

1. The impugned Memo No.1730/Genl.A1/94-3 dated 23-5-1995 is declared as *ultra vires*, without power or jurisdiction and the same is set aside.

2. Consequential orders passed by the Licensing Authority, if any, are vitiated as the Licensing Authority abdicated its statutory functions and acted as per the dictates of the Government, and they accordingly are set aside.

3. If the petitioner has already been accorded permission for reducing seating capacity either by the Government or by the Licensing Authority, the same shall not be rescinded. However, if the order is passed by the Government pursuant to the interim orders of this Court, a formal order by the Licensing Authority is a must to save the order of the Government from the vice of being void order.

4. The petitioner is permitted to make application to the Licensing Authority seeking reduction of seating capacity, if not already made before or during the pendency of the writ petition. Such application shall be considered in accordance with law and keeping in view the observations in this judgment. For the purpose of direction No.3 above the application made by the petitioner, if any, shall be considered.

5. If any licensee has reduced seating capacity in anticipation of sanction by the Licensing Authority, the Licensing Authority may inspect the theatre and give further directions as may be appropriate to avoid abuse or misuse of reduced seating capacity. This direction is in accordance with the judgment of the Division Bench of this Court in WP No.9640 of 1984 dated 30-10-1984.

6. The licensee shall not be entitled to enhance the rates of admission which has been already sanctioned by the Government vide G.O. Ms. No.218 dated 14-7-1995 and any further enhancement by the licensee will be in accordance with further sanction by the competent authority.

7. It is further directed that the Licensing Authority has to consider any application filed at any time seeking reduction of seating capacity subject to the provisions of Rule 10A without any restriction as to cut off date. And

8. There shall be no order as to costs.

In the circumstances, this writ petition is also disposed of in terms of the judgment of this Court in W.P.Nos.21691 of 1995 and 30691 of 1998, dated 26.08.1999. No costs.

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N.V. RAMANA, J.

Date: 03.03.2005

Nsr/Tvk

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary,
Home Department, Government of Andhra Pradesh, Secretariat,

Hyderabad.

2 The Joint Collector,
Krishna District at Machilipatnam.

3 Two CCs to GP for Home, High Court of AP, Hyderabad (OUT)

4 Two CD copies

*Form-NIC-OGS/WP{**PRASAD**}*